(Judgment reserved)

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Writ Petition No. 329 (M/B) of 2005

1. Akhil Bharat Varsiya "Gond" Mahasabha Uttaranchal, Teenpani Dam, Fulsunga, P.O. – Transit Camp, District – Udham Singh Nagar.
2. Sri Ram Prasad Gond, son of Sri Munni Prasad Gond, Mahamantri (Secretary), Akhil Bharat Varsiya Gond Mahasabha Uttaranchal, resident of Teenpani Dam, Fulsunga, P.O. – Teransit Camp, District – Udham Singh Nagar.

…….Petitioners

V e r s u s

1. State of Uttaranchal through Secretary, Home, Government of Uttaranchal, at Dehradun.
2. District Magistrate, Udham Singh Nagar.
3. Tehsildar, Kichha, District – Udham Singh Nagar.

……Respondents

Coram:
Hon'ble M.M. Ghildiyal, J.
Hon'ble B. S. Verma, J.

Oral Judgment (Per Hon'ble M.M. Ghildiyal, J.)

Heard Sri Pankaj Purohit, learned counsel for the petitioners and learned standing counsel for the State of Uttaranchal.

By means of this writ petition, the petitioners have prayed to issue a writ in the nature of Mandamus Commanding the respondents to issue schedule caste certificate to the members of the petitioner society as the caste has been specified to be scheduled caste under Constitution.

The submission of the petitioners is that petitioner no. 1 is a registered society under Societies Registration Act, bearing no. 403 dated 06.05.1950. The persons belonging to 'Gond' Caste are members of the Society. Petitioner no. 2 is the Secretary of the Uttaranchal Branch of the Society. The members of the petitioner society are socially, economically and educationally beckward and under privileged. The President of India under Article 341 of the Constitution has specified the caste 'Gond' as Scheduled Caste in respect of State of U.P. by issuing Constitution (Scheduled Caste) Order 1950 on 10.08.1950 in respect of Uttar Pradesh the 'Gond' case is mentioned at serial no. 36 in the aforesaid Constitutional Order, copy of which is annexed as Annexure no. 2 to the writ petition. Uptil 2003 respondents have issued scheduled caste certificates to the members of petitioner society. However, after 2003 respondent no. 3 has refused to issue scheduled caste certificate to some of the members of the petitioner society without assigning any reason.

Section 24 of the U.P. Re-organization Act, 2000 provides that on and from the appointed day, the Constitution (Scheduled Castes) Order 1950, shall stand amended as directed in the Fifth Schedule to this Act. In the Fifth Schedule of the Act, which is in respect of Uttaranchal the caste 'Gond' is mentioned as entry 36. In para 4 of the counter affidavit filed by Tehsildar, Kichcha it is stated that the petitioners are not entitled for any relief claimed in the writ petition because the members of the petitioner society are not 'Gond' by caste and do not belong to the area of Kamoor Mala, District – Mirzapur now in Sonbhadra, in the State of U.P. It is stated in the

counter affidavit that admittedly the caste 'Gond' comes under the category of Scheduled Caste.

In the affidavit filed by Sri Anil Singh Garbyal, Tehsildar Kichcha, it is stated that only those persons who are domicile of Kamoor Mala, District – Mirzapur now in Sonbhadra, in the State of U.P. having caste 'Gond' are entitled to get scheduled caste certificate.

The submission of the respondents is that section 24 of the U.P. Re-Organization Act, 2000 has specifically states that on and from the appointed day, the Constitution (Scheduled Caste) Order 1950, shall stand amended as directed in the Fifth Schedule to this Act. In the Fifth Schedule of the Act, which is in respect of Uttaranchal the caste 'Gond' is mentioned as entry 36. The submission of the respondents that persons of 'Gond' caste are entitled for scheduled caste certificate only in case they are domicile of District – Mirzapur now in Sonbhadra is not applicable in the case of the petitioner as the members of the petitioner society are the domicile of the State of Uttaranchal. In the Fifth Schedule of the U.P. Re-Organization Act prescribed for State of Uttaranchal the caste 'Gonda' has found place at serial no. 36.

For the reasons recorded above, the writ petition succeeds and respondents are directed to issue necessary certificates to the members of the petitioner society. No order as to costs.

(B.S. Verma, J) **(M.M. Ghildiyal, J)**

February 14, 2006
SKSharma